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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KYLE PETERSEN,

12 Plaintiff,

13 v.

14 ANTHONY SIMS, JR.,

15 Defendant.
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No. 1:20-cv-00884-DAD-EPG

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

(Doc. No. 20)

17 Plaintiff Kyle Petersen is a state prisoner proceeding *pro se* and *in forma pauperis* in this
18 civil rights action brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S.
19 388 (1971). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
20 636(b)(1)(B) and Local Rule 302.

21 Before the court is plaintiff's second motion for reconsideration of the undersigned's
22 November 23, 2020 order (Doc. No. 15) adopting the assigned magistrate judge's September 2,
23 2020 findings and recommendations (Doc. No. 10). (Doc. No. 20.) In that order, the court stayed
24 this action pending resolution of plaintiff's appeal to the Ninth Circuit from the judgment of
25 conviction entered in his criminal case. (Doc. No. 15.) In particular, the court found the issues
26 presented to the Ninth Circuit in that appeal were relevant to the claims plaintiff brings in this
27 civil action concerning the search of his cellular phones as part of the investigation of his criminal
28 case. (*Id.* at 2.)

1 In his second motion for reconsideration, plaintiff contends that the court should
2 reconsider its order staying the action and reiterates the same arguments previously made in his
3 first motion for reconsideration (Doc. No. 16). (Doc. No. 20 at 3, 5–6.)

4 On May 3, 2021, the Ninth Circuit issued an opinion in plaintiff's appeal from the
5 judgment of conviction entered in his criminal case. *United States v. Peterson*, No. 19-10246,
6 ___ F.3d ___, 2021 WL 1727623 (9th Cir. May 3, 2021). As relevant to the instant action, the
7 Ninth Circuit affirmed the district court's rulings denying plaintiff's motions to suppress evidence
8 obtained from the seizures and searches of his cellular phones. (*Id.* at *6.)

9 As a result of the Ninth Circuit's opinion issued on May 3, 2021, plaintiff's motion for
10 reconsideration of this court's order staying the instant action has been rendered moot.

11 Accordingly,

- 12 1. Plaintiff's motion for reconsideration (Doc. No. 20) is denied as moot;
- 13 2. Plaintiff shall file a copy of the Ninth Circuit's opinion concerning his appeal
14 together with a statement regarding whether he wishes to proceed with this civil
15 action no later than June 3, 2021; and
- 16 3. This case is referred back to the assigned magistrate judge for further proceedings.

17 IT IS SO ORDERED.

18 Dated: May 19, 2021

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UNITED STATES DISTRICT JUDGE